



(Billing Code 5001-06-P)

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 208, 216, and 247**

**RIN 0750-AH91**

**Defense Federal Acquisition Regulation Supplement: Requirements for Acquisitions Pursuant to Multiple Award Contracts (DFARS Case 2012-D047)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 863 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2009 (Pub. L. 110-417). Section 863(f) repeals redundant provisions of section 803 of the NDAA for FY 2001, which was implemented by a previous DFARS case, 2001-D017.

**DATES:** Effective Date: [Insert date of publication in the FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Mr. Fernell Warren, telephone 571-372-6089.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On October 25, 2002, a final DFARS rule was published (67 FR 65505) which implemented section 803 of the NDAA for FY 2002 (Pub. L. 107-107; 10 U.S.C. 2304 note). The purpose of section 803 was to achieve savings in expenditures through the use of competition in the purchase of services pursuant to multiple award contracts.

Increasing savings in expenditures through competition is a continuing goal of the Federal Government, and as such, section 863 of the NDAA for FY 2009 required that the Federal Acquisition Regulation (FAR) be amended to require enhanced competition in the purchase of property and services by all executive agencies pursuant to multiple-award contracts. Final publication of FAR Case 2007-012 (March 2, 2012), Requirements for Acquisitions Pursuant to Multiple-Award Contracts, satisfied this requirement of section 863.

The statute also repeals section 803 of the NDAA for FY2002 as a redundant provision. As such, this final rule reconciles and removes from the DFARS all obsolete references to section 803 of the NDAA for FY2002 (Pub. L. 107-107; 10 U.S.C. 2304 note) now implemented in the FAR.

This final rule makes the following changes:

- Modify 208.404(a)(i) to delete the reference to 208.405-70(c)(2) which is redundant, and to change \$150,000 to the simplified acquisition threshold to reconcile with the FAR.

- Relocate the reference to the provisions prescribed at 215.371-6 and 215.408(4) from 208.405-70(d) to 208.404 in order to retain the cross reference to the provisions that remain applicable.
- Delete 208.405-70 because it is redundant with FAR 8.405. Competitive requirements when using Federal Supply Schedules are now fully implemented in the FAR.
- Modify 208.7400(d) to delete an obsolete reference to 208.405-70.
- Renumber 216.501 to 216.501-2-70 to reconcile with FAR using the correct numbering convention.
- Delete 216.501-1. Only "Multiple-award contract" was defined and it was only used in 216.505-70 which is also deleted in this rule.
- Renumber 216.501-2(a) to 216.501-2-70(b) to reconcile with FAR.
- Delete 216.505-70(a), (b), (c), (d)(1), (2), (4), and (5) which are redundant. Competitive requirements for orders under multiple-award contracts are now fully implemented in the FAR at 16.500(d) and 16.505(b). Retain content of 216.505-70(d)(3), renumbered as 216.505-70, which remains applicable under the stated circumstances.

- Modify 247.271-3(f) to change the reference from FAR 16.505(a)(4) to 16.504(a)(4)(vii) to reconcile with FAR numbering. FAR 16.505(a)(4) was not changed by FAR Case 2007-012, but no longer discusses oral orders.

## **II. Publication of this final rule for public comment is not required by statute**

Publication of proposed regulations, 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it simply reconciles and removes all obsolete references to section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107; 10 U.S.C. 2304 note) from the DFARS. These requirements affect only the internal operating procedures of the Government, and the rule does not create a significant cost or administrative impact on contractors or offerors.

### **III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### **IV. Regulatory Flexibility Act**

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501-1, and 41 U.S.C. 1707 does not require publication for public comment.

### **V. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

## List of Subjects in 48 CFR Parts 208, 216, and 247

Government procurement.

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Editor, Defense Acquisition Regulations System.

Therefore, DoD amends 48 CFR parts 208, 216, and 247 as follows:

1. The authority citation for parts 208, 216, and 247 continue to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR Chapter 1.

### **PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES**

2. Amend section 208.404 by—

- a. Revising paragraph (a)(i); and
- b. Adding a new paragraph (a)(iv).

The text of the revisions and additions read as follows:

#### **208.404 Use of Federal Supply Schedules.**

(a)(i) If only one offer is received in response to an order exceeding the simplified acquisition threshold that is placed on a competitive basis, the procedures at 215.371 apply.

\* \* \* \* \*

(iv) Use the provisions at 252.215-7007, Notice of Intent to Resolicit, and 252.215-7008, Only One Offer, as prescribed at 215.408(3) and 215.408(4), respectively.

**208.405-70 [Removed]**

3. Section 208.405-70 is removed.

**208.7400 [Amended]**

4. Amend section 208.7400, paragraph (d), by removing "established in accordance with FAR 8.405 and 208.405-70; or" and adding "established in accordance with FAR 8.405; or" in its place.

**PART 216-TYPES OF CONTRACTS**

**216.501 [Redesignated as 216.501-2-70]**

5. Redesignate section 216.501 as section 216.501-2-70.

6. In newly redesignated section 216.501-2-70, add paragraph (b) to read as follows:

**216.501-2-70 General.**

\* \* \* \* \*

(b) See 217.204(e)(i) for limitations on the period for task order or delivery order contracts awarded by DoD pursuant to 10 U.S.C. 2304a.

**216.501-1 and 216.501-2 [Removed]**

7. Remove sections 216.501-1 and 216.501-2.

8. Revise section 216.505-70 to read as follows:

**216.505-70 Orders under multiple award contracts.**

If only one offer is received in response to an order exceeding the simplified acquisition threshold that is placed on a competitive basis, the contracting officer shall follow the procedures at 215.371.

**PART 247-TRANSPORTATION**

**247.271-3 [Amended]**

9. Amend section 247.271-3, paragraph (f), by removing "for placing oral orders in accordance with FAR 16.505 (a)(4), document the oral orders" and adding "for placing oral orders in accordance with FAR 16.504(a)(4)(vii), document the oral orders" in its place.

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